

## **TERMS AND CONDITIONS:**

The DOD, through the DLA, has final authority to determine the type, quantity, and location of excess DOD personal property suitable for law enforcement activities, if any, which will be transferred to the State. This agreement creates no entitlement in the State to receive excess DOD personal property. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use with the exception of authorized Transitional Distribution Points (TDPs) and/or Customer Reserve Stock (CRSs), which are required to utilize property within one year or schedule its return to the nearest Defense Reutilization Marketing Office (DRMO). Property will not be obtained for the purpose of sale, lease, rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements. Requests for property for the purpose of cannibalization will be considered for approval on a case by case basis. A memorandum must be submitted to the Director of the Law Enforcement Support Office (LESO) requesting approval. Any transportation, repair, maintenance, insurance, disposal, or other expenses associated with this excess DOD personal property is the sole responsibility of the State/LEA.

The State will establish and submit to the DLA, a State Plan of Operation, developed in accordance with Federal and State law and conforming to the provisions of this MOA. This State Plan of Operation will detail organizational and operational authority including staffing and facilities. It will also address procedures for making determinations of LEA eligibility, allocation and equitable distribution of material, accountability and responsibility concerning excess DOD personal property, training and education, Operational Effectiveness Reviews (OERs), and procedures for turn-in, transfer, and disposal. Property obtained under this MOA must be placed into use within one (1) year of receipt and utilized for a minimum of one (1) year, unless the condition of the property renders it unusable. Only in special circumstances will property be obtained and held for the minimum time frames and then sold, bartered, exchanged, or traded. Approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval. Property will not physically move until the approval process is complete. If property is not put into use by the recipient within one (1) year, the State/LEA must contact the DLA LESO to coordinate the return of the property to the nearest DRMO for proper disposition. Once the DLA LESO is notified and a DRMO is identified, property must be returned within thirty (30) days. The State/LEA will bear the burden of returning the property to the nearest DRMO. Under no circumstances will property be sold or otherwise transferred to non-U.S. persons or exported.

Only the Governor appointed State Coordinator identified at the end of this document is authorized to enter into this Agreement on behalf of the State. An Appointment Letter from the State Coordinator, authorizing the State Point of Contact (POC) signature authority or to act on the behalf of the State Coordinator must be on file with the DLA LESO in order to actively participate in the program. The State Coordinator is required to sponsor LEAs that want to actively participate in the program and the State

Coordinator must screen all LEAs requests for excess DOD personal property. The State Coordinator will validate that all approved requests for property are legitimate and for law enforcement purposes. In so doing, the State Coordinator assumes the responsibility to maintain records ensuring LEA accountability for all excess DOD personal property received through the 1033 Program for his/her state. In conjunction with each request, the State Coordinator will furnish a detailed justification for the property. Property received through the 1033 Program can only be distributed to an authorized LEA for whom the initial request was made and justification was provided, unless the property was requested for a TDP or from CRS.

The DOD has authorized the transfer and use of excess Federal property to the State/LEA and as such reserves the right to recall any and all property issued through the 1033 or 1208 Programs. As stipulated in Federal regulation, title may be conditionally granted to the State/LEA upon receipt of the property, however approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval before the disposal, sale, auction, trade-in, salvage or transfer of any 1033 or 1208 property can occur. Property will not physically move until the approval process is complete. Costs of shipping or repossession of the excess DOD personal property by the U.S. Government will be borne by the LEA. To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The State will maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance by the State/LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.

**All excess DOD personal property will be managed utilizing property accounting records.** These records will be concise, accurate, and be able to provide timely and relevant information. Records will be maintained in accordance with the DLA Record Management Procedures and Records (DLA Directive (DLAD) 5025.30 - See Appendix).

**The DLA LESO will conduct an OER for all Federal Agencies, States, and U.S. Territories enrolled in the 1033 Program every two (2) years.** If a Federal Agency, State, or U.S. Territory fails an OER, the DLA LESO will temporarily suspend their operations. If a Federal Agency, State, or U.S. Territory fails to correct identified deficiencies the DLA LESO will permanently suspend their operations. The Federal Agency, State, or U.S. Territory will bear all expenses related to the turn-in to the nearest

DRMO, the transfer to an approved Federal Agency, State, or U.S. Territory or the disposal of all excess DOD personal property.

**All property missing, lost, stolen, damaged, or destroyed must be reported to the DLA LESO.** Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within twenty-four (24) hours. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within seven (7) days. Extensions will be granted on a case by case basis.

**In the event of a domestic disaster, accountability of excess DOD personal property must be conducted by every Federal Agency, State, and U.S. Territory within the effected area.** Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within seven (7) days. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within thirty (30) days. Extensions will be granted on a case by case basis.

**All aircraft (fixed wing and rotary wing), Flight Safety Critical Aircraft Parts (FSCAP), Demilitarization required Munitions List Items (MLI), Commerce Control List Items (CCLI) may be transferred to the State for its use in law enforcement activities.** The State Plan of Operation must ensure that all LEAs and all subsequent users are aware of and agree to provide all required controls in accordance with applicable laws and regulations for these items. Additionally, the following conditions apply:

A. LEAs may transfer aircraft and FSCAP with other authorized LEAs, provided the aircraft and components are maintained in accordance with applicable airworthiness standards and procedures for maintenance and repair and provided further that the LEAs perpetuate repair and maintenance documentation. The LEA must request the transfer of aircraft and FSCAP through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer of aircraft and FSCAP will be borne by the State/LEA.

B. LEAs may transfer FSCAP and MLI items requiring demilitarization (Demilitarization Codes C, D, E, and F) to another authorized LEA within their State or they must be turned-in to the nearest DRMO when no longer required for law enforcement use. The LEA must request the transfer or turn-in of FSCAP and MLI items through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer or turn-in of FSCAP and MLI items will be borne by the State/LEA.

C. LEAs enrolled in the 1208 Program can sell, trade or barter aircraft and aircraft parts issued on or before September 30, 1996. LEAs that received aircraft or aircraft parts after September 30, 1996 have the following options: retain the aircraft or aircraft parts, transfer them to another LEA or turn them in to the

nearest DRMO. The LEA must request to sell, trade, barter, transfer or turn-in aircraft and aircraft parts through the State Coordinator, who in turn must request approval from the LESO. Aircraft and aircraft parts will not physically move until the approval process is complete. All costs related to the sell, trade, barter, transfer or turn-in will be borne by the State/LEA.

**LEAs may transfer weapons provided through the 1033 or 1208 Program to an authorized LEA within their State, to an authorized LEA in another participating State, or they must turn-in their weapons to the U.S. Army Tank-Automotive and Armaments Command (TACOM) when no longer required for law enforcement use.** The LEA must request the transfer or turn-in of weapons through the State Coordinator, who in turn must request approval from the LESO. Weapons will not physically move until the approval process is complete. All costs related to the transfer or turn-in of weapons will be borne by the State/LEA.

**When the State Coordinator/LEAs no longer require MLI/CCLI (Demilitarization B and Q), the State Coordinator/LEA must transfer the equipment to another authorized LEA or turn-in to the nearest DRMO.** The State Plan of Operation must reflect these two options. The LEA must request the transfer or turn-in to the nearest DRMO through the State Coordinator, who in turn must request approval from LESO. MLI/CCLI (Demilitarization Codes B and Q) property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

Except where indicated in this MOA, **the State/LEAs may transfer, turn-in to the nearest DRMO, or dispose of other types of property (Demilitarization Code A items) in accordance with applicable Federal, State, and local laws when it is determined that the State/LEA no longer requires the property for law enforcement use.** The LEA must request the transfer, turn-in to the nearest DRMO, or disposal through the State Coordinator, who in turn must request approval from LESO. Demilitarization Code A property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

By signing this MOA or accepting excess DOD personal property under this MOA, the State pledges that it and each LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

- A. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.
- B. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as

implemented by Department of Health and Human Services regulations in 45 CFR Part 90.

C. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 U.S.C. 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DOD. The State Plan of Operation is subject to Federal review and will require DLA LESO approval prior to any subsequent transfer of excess DOD personal property.